



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**HC.MISC.CASE NO. 207 OF 2011**

TIMOTHY MAINA THIONGO.....APPLICANT

**VERSUS**

GEORGE M. KINGORI.....RESPONDENT

**RULING**

Pursuant to the order of leave given on 5/12/2011, **Timothy Maina Thiongo**, the applicant herein, took out the Motion dated 15th December, 2011 in which he sought for **George Mwangi Kingori**, the Respondent to be cited for contempt. The applicant swore an affidavit he filed to support the application. The Respondent opposed the application by filing the replying affidavit he swore on 26th January, 2012.

It is the submission of the applicant that the Respondent went and uprooted the boundary marks and encroached the access road leaving a small path of about 2 metres thus rendering the court order issued by the **Kangema S.R.M's court vide L.D.T case no.21 of 2007 on 26th November, 2007** useless. The court issued an order directing the District Surveyor to visit the disputed parcels of land i.e **Loc.13/Karunge/1930,681,713 and 1934** to align the boundary to their original places. That order was later reviewed to include all the other affected parcels i.e **666, 677,705,1883,1882,2391,1863,839,660,708 and 1394**. It is said the District Surveyor and Land Registrar, Muranga complied with the court orders by visiting the land, fixed the boundaries and thereafter filed a report. The Respondent is said to have gone and undid what was done pursuant to the court orders yet he had not challenged those orders before the High Court.

The Respondent denied disobeying the court orders claiming the District Surveyor and Land Registrar were never authorised to implement the court orders. He stated that both parties were directed to appoint independent surveyors to carry out the survey and alignment of the boundaries.

After a careful consideration of the rival submissions, it is apparent that the Respondent does not deny the allegations that he went and uprooted the boundary marks which had been fixed by the District Land Surveyor. His main contention is that they were to appoint independent surveyors and that the District Surveyor and the Land Registrar were never authorised to do what they did. The Respondent does not state that he did not understand the meaning of the order. I find that the court order was disobeyed and rendered useless by the Respondent's conduct. The Respondent had knowledge of the order and the purpose of the order. The court gave an order on 26/11/2007 which was implemented by the District Land Surveyor and the District Registrar who thereafter made a report but the Respondent uprooted those boundary marks thus acting in contempt of those court orders. I find George Maina Kingori guilty for contempt of court hence he is convicted. Before pronouncing a sentence let me give him a chance to Mitigate to enable me pronounce the appropriate sentence.

**Dated, Signed and delivered in open court this 21st day of February, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Miss. Muthike holding brief for Mr. Gacheru for Applicant

Mr. Ombongi holding brief for Mr. Gori for Respondent